

09:26AM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

September 3, 2024

TRANSCRIPT EXCERPT - EXAMINATION OF JOSEPH KRYWALSKI
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY
BY: JOSEPH M. TRIPI, ESQ.
NICHOLAS T. COOPER, ESQ.
CASEY L. CHALBECK, ESQ.

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For the Plaintiff

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BY: ROBERT CHARLES SINGER, ESQ.

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And

LAW OFFICES OF PARKER ROY MacKAY

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And

OSBORN, REED & BURKE, LLP

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For the Defendant

PRESENT:

BRIAN A. BURNS, FBI Special Agent
MARILYN K. HALLIDAY, HSI Special Agent
KAREN A. CHAMPOUX, USA Paralegal

LAW CLERK:

REBECCA FABIAN IZZO, ESQ.

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(Excerpt commenced at 11:51 a.m.)

(Jury is present.)

THE COURT: The government can call its next witness.

MS. CHALBECK: Thank you, Your Honor.

The government calls Joseph Krywalski.

J O S E P H K R Y W A L S K I, having been duly called and
sworn, testified as follows:

MS. CHALBECK: May I inquire, Your Honor?

THE COURT: You may.

DIRECT EXAMINATION BY MS. CHALBECK:

Q. Good morning, sir, how are you?

A. Good, thank you.

Q. Please tell the jury who you are.

A. My name is Joseph Krywalski. I'm employed by the
New York State Police out of SP Lockport.

Q. And so as can you tell, Ann is taking down everything
that you're saying and that I'm saying, so just try to speak

11:53AM 1 as slowly as possible so that she can get everything that
11:53AM 2 you're saying. Sound good?

11:53AM 3 A. No problem.

11:53AM 4 Q. Okay. Where do you -- you work at for the state police
11:53AM 5 in Lockport; is that right?

11:53AM 6 A. That's correct.

11:53AM 7 Q. How long have you worked for the state police?

11:53AM 8 A. 19 and a half years now.

11:53AM 9 Q. And prior to working in Lockport, what position were you
11:53AM 10 in with the state police?

11:53AM 11 A. I started as a trooper, made my way through the state
11:53AM 12 ending up in Western New York ultimately where I live. And
11:54AM 13 then I became a sergeant eventually.

11:54AM 14 Q. And when you're a trooper, do you go on things called
11:54AM 15 road patrols?

11:54AM 16 A. I do.

11:54AM 17 Q. And I want to direct your attention to the 2013 time
11:54AM 18 period. Were you a trooper doing road patrols in August of
11:54AM 19 2013?

11:54AM 20 A. I was. I was a trooper stationed SP Clarence at the
11:54AM 21 time.

11:54AM 22 Q. And when you say "SP," is that short for state police?

11:54AM 23 A. It is.

11:54AM 24 Q. Okay. Do you know an individual by the name of Jessica
11:54AM 25 Leyland?

11:54AM 1 A. I do.

11:54AM 2 Q. And how do you know that person?

11:54AM 3 A. I had arrested her in August of 2013.

11:54AM 4 Q. Did you arrest her based on a traffic stop?

11:54AM 5 A. I did.

11:54AM 6 Q. And was that a traffic stop that you were performing in

11:54AM 7 your capacity as a trooper doing a road patrol?

11:54AM 8 A. It was.

11:54AM 9 Q. Where was the traffic stop and arrest?

11:54AM 10 A. The stop occurred on Transit Road near Aero Drive in the

11:55AM 11 Town of Cheektowaga.

11:55AM 12 Q. Is that near Pharaoh's Gentlemen's Club?

11:55AM 13 A. It is within eyesight of it.

11:55AM 14 Q. Right down the road?

11:55AM 15 A. A couple hundred yards.

11:55AM 16 Q. What time of day did you arrest Ms. Leyland?

11:55AM 17 A. I believe it was 2:35 in the morning was our initial

11:55AM 18 interaction.

11:55AM 19 Q. And what, if anything, did you see in Ms. Leyland's

11:55AM 20 vehicle when you stopped her?

11:55AM 21 A. I walked up on the passenger's side of the vehicle, my

11:55AM 22 partner was on the driver's side speaking to her at the time.

11:55AM 23 And then right on the driver's -- excuse me, the passenger

11:55AM 24 side front, in plain view was a bag full of individual

11:55AM 25 baggies of cocaine.

1 Q. Did you see any -- anything else, like, around the
2 gearshift of the car?

3 A. There was. When we do traffic stops, you're looking at
4 the whole vehicle. There was marijuana shake littered across
5 the gearshifter, as well as a burnt marijuana cigarette in
6 the ashtray.

7 Q. Did you make any observations about the content of the
8 vehicle in the back seat?

9 I can ask a more specific question. Did you see any
10 apparel in the back seat of the car?

11 A. After the arrest we subsequently towed the vehicle and
12 did an inventory, and there was scantily clad clothing in the
13 back of the vehicle, and she had made mention of being a
14 dancer.

15 **MR. SINGER:** Objection, hearsay. I didn't realize it
16 was going to be that loud.

17 **THE COURT:** Sustained. So we don't want you to say
18 anything that she said to you.

19 **THE WITNESS:** Fair enough.

20 **THE COURT:** Just what you saw.

21 **MR. SINGER:** Apologies, Your Honor.

22 I think I scared myself too, Judge.

23 **THE COURT:** You scared all of us, Mr. Singer.

24 **MS. CHALBECK:** Your Honor, just based on you what
25 told the witness, do you mind if the parties approach?

11:56AM 1 **THE COURT:** No, come on up.

11:56AM 2 (Sidebar discussion held on the record.)

11:56AM 3 **MS. CHALBECK:** So I just heard the Court make a
11:57AM 4 ruling, don't say anything about what Ms. Leyland told him. I
11:57AM 5 was going to ask the witness if Ms. Leyland had -- had
11:57AM 6 described where she got the cocaine from.

11:57AM 7 Based on a prior interview and also the court records
11:57AM 8 relating to this arrest, Ms. Leyland tells Trooper Krywalski
11:57AM 9 that she got the cocaine from Pharaoh's, and that she did a
11:57AM 10 bump of the cocaine.

11:57AM 11 In my view, that's a statement against penal
11:57AM 12 interests because essentially Ms. Leyland is admitting to a
11:57AM 13 law enforcement officer while she's about to be arrested that
11:57AM 14 she sampled this cocaine at Pharaoh's to make sure that it
11:57AM 15 wasn't baking soda and she then takes the coke.

11:57AM 16 **THE COURT:** Is she a coconspirator as well?

11:57AM 17 **MR. COOPER:** Yes.

11:57AM 18 **MS. CHALBECK:** Yes. But it's not a statement that's
11:57AM 19 necessarily made in furtherance of the conspiracy.

11:57AM 20 But I think under United States versus Ojudun, which
11:57AM 21 is a 2019 2nd Circuit case, it's 915 F.3d 875, 2nd Circuit
11:58AM 22 2019, I think that this plainly falls within the ambit of a
11:58AM 23 statement against penal interests because it's a statement
11:58AM 24 where she admits to using cocaine to a law enforcement
11:58AM 25 officer.

11:58AM 1 **THE COURT:** Why not?

11:58AM 2 **MR. SINGER:** So the reason why the 804 exception
11:58AM 3 doesn't apply, Judge, is because the government hasn't
11:58AM 4 demonstrated her unavailability, and that's the problem, is
11:58AM 5 that to get a penal interest exception to apply, the witness
11:58AM 6 has to be unavailable.

11:58AM 7 **THE COURT:** She's going to testify, isn't she?

11:58AM 8 **MS. CHALBECK:** Jessica Leyland?

11:58AM 9 **THE COURT:** Yeah.

11:58AM 10 **MS. CHALBECK:** No, she's not going to testify. I
11:58AM 11 think she's incarcerated right now, and she's charged.

11:58AM 12 **THE COURT:** I thought she was on the list I saw.

11:58AM 13 **MS. CHALBECK:** No, Judge.

11:58AM 14 **MR. COOPER:** She's charged by the United States
11:58AM 15 Attorney's Office and has an attorney. She's -- to be asked
11:58AM 16 questions about this would obviously cause her to invoke the
11:59AM 17 Fifth.

11:59AM 18 **THE COURT:** No, okay. I missed -- I don't know why
11:59AM 19 somewhere in my head I thought she was on the witness list.

11:59AM 20 **MR. COOPER:** There's a lot of witnesses, Judge.

11:59AM 21 **THE COURT:** Yeah, I know, I know. There's a lot of
11:59AM 22 names being mentioned.

11:59AM 23 **MR. COOPER:** Yes, sir.

11:59AM 24 **THE COURT:** I apologize.

11:59AM 25 **MS. CHALBECK:** As you Your Honor knows, if the

1 witness invokes the Fifth Amendment, that is, you know, a form
2 of unavailability.

3 **THE COURT:** Yeah, but that's not happened yet.

4 Yeah, I don't think so. I don't think so.

5 **MS. CHALBECK:** Okay.

6 (End of sidebar discussion.)

7 **BY MS. CHALBECK:**

8 Q. Trooper Krywalski, moments ago you testified that you
9 observed cocaine in the front passenger seat of Ms. Leyland's
10 vehicle; is that right?

11 A. That's correct.

12 Q. How much cocaine are we talking about here?

13 A. It was 39 individually wrapped baggies.

14 Q. Did you eventually weigh that cocaine?

15 A. I did.

16 Q. Was it -- how much cocaine did that weigh out to be?

17 A. More than eight or nine 8 Balls, 31 and a half grams, I
18 believe, was the total for just the 39 baggies, there was
19 a --

20 Q. Sorry.

21 A. There was additional drugs found, but just those, I
22 believe.

23 Q. I think an 8 Ball is something that this jury has heard
24 about. Is that a good amount of cocaine?

25 A. Yes.

1 Q. And this occurred -- this traffic stop occurred right
2 down the road from Pharaoh's?

3 A. That's correct.

4 **MS. CHALBECK:** One moment.

5 **BY MS. CHALBECK:**

6 Q. Does an 8 Ball refer to approximately an eighth of an
7 ounce of cocaine?

8 A. That's correct.

9 Q. And I think you testified, Sergeant Krywalski, that these
10 were individually wrapped baggies of cocaine?

11 A. That's correct.

12 Q. Based on your experience in law enforcement, is that
13 consistent with a distribution practice?

14 A. Yes.

15 **MS. CHALBECK:** Okay. No further direct, Your Honor.

16 **THE COURT:** Any cross?

17 **MR. SINGER:** I have no questions, Judge.

18 **THE COURT:** You can step down, sir.

19 **THE WITNESS:** Thank you, Judge.

20 (Witness excused at 12:01 p.m.)

21 (Excerpt concluded at 12:01 p.m.)

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CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court for
the Western District of New York on September 3, 2024

s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.